

In The  
**Supreme Court  
of the United States**

OCTOBER TERM 1976

**76-1792**

No. ....

BILL SHAW,

*Petitioner.*

v.

JAMES EDWARD CLAYTON,

*Respondent.*

*Petition for Writ of Certiorari to The  
United States Court of Appeals  
For the Fifth Circuit*

HENRY WADE  
Criminal District Attorney  
Dallas County, Texas

JOHN B. TOLLE  
Assistant District Attorney  
Dallas County Courthouse  
Dallas, Texas 75202  
(214) 749-8511

*Attorneys for Petitioner*

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The petitioner, Bill Shaw, Clerk of the District Courts of Dallas County, Texas, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit rendered in this cause on March 17, 1977.

**OPINION BELOW**

The decision by the District Court is set out in the appendix to this petition. The opinion of the Fifth Circuit is also set out in the appendix, and it is reported at 548 F.2d 1155, (1977).

### **JURISDICTION**

The jurisdiction of this Court is invoked pursuant to the provisions of Title 28, U.S.C. Section 1254(1).

### **QUESTIONS PRESENTED**

Does the mere fact that a person is the victim of a tort committed by a state official, rather than by a private party provide an adequate basis for affording him a federal remedy under the Civil Rights Act?

### **STATUTE INVOLVED**

Title 42 U.S.C. Section 1983, which provides that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

### **STATEMENT OF THE CASE**

The cause arose as a Civil Rights complaint by James Edward Clayton, a Texas prisoner. He alleged that certain property belonging to him which had been seized by the arresting officers as evidenced at the time of Clayton's arrest had been delivered to the District Court of Dallas County, Texas, and had been given by that Court to Bill Shaw, Clerk of the District Court, and that Shaw refused to return the property to him even though the prosecutions had been completed and the property was no longer needed as evidence.

Shaw moved for judgment on the pleadings. The trial court granted the motion on the ground that Clayton's pleadings

showed that he did not claim that he had been deprived of his property without due process of law, but merely that he had been the victim of conversion or theft of such property, for which the State of Texas provided adequate remedies.

The Fifth Circuit reversed for the reasons stated in the opinion set out in the appendix to this petition, and Shaw seeks a writ of certiorari from this Court.

### **REASON FOR GRANTING THE WRIT**

#### **THE DECISION BELOW FAILED TO ADDRESS THE REAL ISSUE IN THIS CASE.**

The Court of Criminal Appeals held that property rights can serve as the basis for a Civil Rights action. This is, of course, true, and the District Court did not hold otherwise. The real issue decided by the District Court was its determination that the Civil Rights Act did not entitle a person to a federal remedy merely because he suffers a tort at the hands of a state official. There is no question in this case that Clayton's property was not taken unlawfully. Indeed, Clayton stated in his complaint that the property was delivered to Shaw, as court clerk, by the court itself. The Circuit Court simply ignored the District Court's cogent analysis of the facts shown by Clayton's pleadings, as well as its correct statement of the applicable law. The cases cited and relied on by the Court of Appeals concerned the wrongful taking of inmates' property, a circumstance which did not exist in this case.

### **CONCLUSION**

This case squarely presents a situation in which a prison inmate is being afforded a federal remedy for the redress of an ordinary common law tort claim merely because the alleged tort-feasor is a state official. Such an enlargement of the Civil Rights Act places



a wholly unnecessary burden upon the already over-taxed federal judicial system. It should not be permitted to stand.

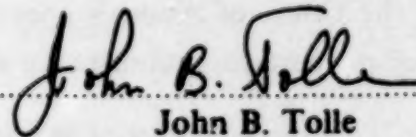
Respectfully submitted,

.....  
HENRY WADE  
Criminal District Attorney  
Dallas County, Texas

  
.....  
JOHN B. TOLLE  
Assistant District Attorney  
Dallas County Courthouse  
Dallas, Texas 75202  
(214) 749-8511

#### CERTIFICATE OF SERVICE

I, John B. Tolle, a member of the Bar of the Supreme Court of the United States, do hereby certify that I have served three copies of this petition on the respondent, James Edward Clayton, by placing the same in the United States Mail, first-class postage prepaid, addressed to him at the Texas Department of Corrections, Ellis Unit, Route 3, Huntsville, Texas 77340, on June 14, 1977.

  
.....  
John B. Tolle

A-1

In The  
**United States District Court**  
For the Northern District of Texas  
Dallas Division

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Civil Action No. CA3-75-1523-G

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**JAMES EDWARD CLAYTON**

v.

**BILL SHAW, DISTRICT CLERK,  
DALLAS COUNTY, TEXAS**

**ORDER**

Came on to be considered before this court the defendant's Motion for Judgment on the Pleadings. The court having considered the motion, it is hereby ORDERED that the Motion for Judgment on the Pleadings is granted.

The three elements of 42 U.S.C. 1983 are: (1) a taking of property, (2) under the color of law, (3) without due process. Though the first two elements are arguably present, the third is not. Reading the Complaint in a light most favorable to the plaintiff,<sup>1</sup> the inescapable conclusion is that the plaintiff claims only conversion or theft of property, for which the State of Texas provides post-seizure remedies. Not every taking of property not preceded by a hearing is a denial of due process. The state remedies for conversion and theft meet the due process requirement of 42 U.S.C. 1983.

That is not to say that exhaustion of state remedies is necessary for a 1983 action; certainly, it is not. The reference to state remedies is solely for the determination of the due process issue. Given the uncontested and patently valid initial seizure of the property and the adequacy of the post-seizure remedies, the plaintiff has failed to state a claim; due process was not denied. See Justice (then Judge) Stevens' concurrence in *Kimbrough v. O'Neil*, 523 F.2d 1057 (7th Cir. 1975).

SIGNED AND ENTERED this 15 day of July, 1976.

/s/ PATRICK E. HIGGINBOTHAM

Patrick E. Higginbotham  
United States District Judge

<sup>1</sup> *Conley v. Gibson*, 355 U.S. 41 (1957).

**James Edward CLAYTON,**  
**Plaintiff-Appellant,**

**v.**

**Bill SHAW, District Clerk, Dallas**  
**County, Texas**  
**Defendant-Appellee.**

**No. 76-3253**

**Summary Calendar.\***

**United States Court of Appeals,**  
**Fifth Circuit.**

**March 17, 1977.**

**Appeal from the United States District Court for the Northern District of Texas.**

**Before AINSWORTH, CLARK and RONEY, Circuit Judges.**

**PER CURIAM:**

James Edward Clayton appeals the district court's dismissal of his claim for relief under 42 U.S.C.A. §1983. His complaint against the clerk of the Dallas County Court asserts that the clerk failed to return to him certain items of personal property, which he alleges were seized at the time of his arrest and introduced as evidence during his trial. The defendant clerk answered with a denial of custody at any time of any of plaintiff's property and moved for a judgment on the pleadings. The district court granted the motion on the ground that, although plaintiff had alleged a taking of property under color of law, he had not asserted that the taking was without due process of law, as required by section 1983. The court held that the state remedies provided by the Texas statutes meet the due process requirement.



[1] Ever since the Supreme Court's decisions in *Lynch v. Household Finance Corp.*, 405 U.S. 538, 92 S.Ct. 1113, 31 L.Ed.2d 424 (1972), and *Weddle v. Director, Patuxent Institution*, 405 U.S. 1036, 92 S.Ct. 1318, 31 L.Ed.2d 577 (1972), *vacating* 436 F.2d 342 (4th Cir. 1970), it has been well settled law that 28 U.S.C.A. § 1343(3) can be used as a jurisdictional basis in a 1983 action when only property rights are involved. *Wendle* involved an action by a state prisoner for return of personal property having an aggregate value of only \$3.52. This Court has applied the *Lynch* rationale on numerous occasions to cases involving the wrongful confiscation or detention of an inmate's property by prison or other state officials. See *Demps v. Wainwright*, 522 F.2d 192 (5th Cir. 1975); *Carter v. Estelle*, 519 F.2d 1136 (5th Cir. 1975); *Watson v. Stynchombe*, 504 F.2d 393 (5th Cir. 1974); *Clayton v. Wade*, 487 F.2d 595 (5th Cir. 1973); *Culp v. Martin*, 471 F.2d 814 (5th Cir. 1973); *Montana v. Harrelson*, 469 F.2d 1091 (5th Cir. 1972).

[2] Reading plaintiff's *pro se* pleadings and briefs, to which defendant has failed to respond on appeal, with the liberality required by *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), we find that defendant's answer denying custody of plaintiff's property was an insufficient basis upon which to dismiss his 1983 claim. some factfinding procedures were required. *Clayton v. Wade, supra*. Therefore we vacate the district court's judgment and remand for further proceedings consistent with *Campbell v. Beto*, 460 F.2d 765 (5th Cir. 1972)

VACATED AND REMANDED.